

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

)
 Public Service Commission of)
 Wisconsin Petition for Delegation)
 of Additional Authority to Implement Area)
 Code Conservation Measures)
)
)

File No. NSD-L-99-64

CC Dkt. No. 96-98

Comments of Omnipoint Communications, Inc.

Omnipoint Communications, Inc. ("Omnipoint"), by its attorneys, respectfully submits its comments in response to the Commission's August 12, 1999 Public Notice in the above-referenced proceeding, which requested comments concerning the request of the Public Service Commission of Wisconsin ("Wisconsin PSC") for additional authority to implement number conservation measures. For the reasons discussed below, Omnipoint urges the Commission to reject this petition – as well as all other similar state requests – until the Commission has issued uniform, national guidelines governing number conservation in its pending rulemaking.

I. The Wisconsin PSC's Requests Duplicate Matters That Are Already Under Consideration by the Commission

The Wisconsin PSC requests that the Commission to delegate it the authority to: (1) enforce current standards for number allocation, or alternatively to set and enforce new standards; (2) to order efficient number use practices by carriers within NXX codes; (3) to order the return of unused and reserved NXX codes (as well as thousand blocks, if number pooling is implemented); (4) to order number utilization and forecasting reporting, as well

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as permit them to audit such reports; (5) to investigate and order unassigned number porting; (6) to investigate and order additional rationing measures; and (7) to implement mandatory thousand block number pooling.

As the Wisconsin PSC is well aware, the Commission is already reviewing number conservation policies in its current rulemaking in CC Docket 99-200. As part of this investigation, the Commission is also examining the extent to which it should maintain centralized authority over numbering issues, as well as whether states such as Wisconsin should be delegated authority to design and execute conservation measures. In addition to duplicating the issues in this proceeding, the Wisconsin PSC's petition is also similar to recent requests for additional number conservation authority filed by the states of California, Massachusetts, New York, Florida, and Connecticut.

In these proceedings, Omnipoint and many other commenters have stressed the need for the Commission to adopt uniform, national conservation guidelines, and have generally opposed delegating additional numbering authority to states such as Wisconsin until such standards are in place.¹ The Wisconsin PSC seems to anticipate this opposition, and downplays the impact that its requests would have upon the industry and national numbering system if they were granted. For example, the Wisconsin PSC claims that "much of the authority [it] seeks merely involves strict enforcement of existing industry guidelines," and assures the Commission that "care will be taken to minimize

¹ See, e.g., Omnipoint Comments to the Petitions by California, Massachusetts, New York, Maine, and Florida for Additional Authority to Implement Telecommunications Numbering Conservation Methods, NSD File Nos. L-98-136/L-99-19/L-99-21/L-99-27/L-99-33, at 1-5 (filed July 16, 1999)("Omnipoint State Comments"); see also Omnipoint Comments in CC Dkt. 99-200, at 2-5 (filed July 30, 1999)("Omnipoint Numbering Comments").

differences between what is being considered on a national level so that if any modifications are necessary later they will be minimal.”² The Commission should not accept these statements at face value, however. Once the states are delegated numbering authority and differences are allowed to develop between federal and state regulations, the “minimization” of these differences will be a difficult and contentious project and the states will surrender their authority only with great reluctance. Moreover, the costs of such “differences” will inevitably be borne by carriers and consumers over the long term. Even if states such as Wisconsin eventually relinquished such authority and eliminate all differences between their standards and the federal rules, it would be difficult, inefficient and extremely expensive for carriers such as Omnipoint to comply with such rules during the interim. In the long term interest of the NANP, it should be clear that any devolution of authority to Wisconsin and the “minimization” of the resulting regulatory differences is no substitute for maintaining a single, unified and uniform system of number administration in the United States.

The Wisconsin PSC has also made little or no showing that a numbering crisis exists in Wisconsin that prevents it from waiting for national conservation rules, and has not otherwise justified the burdens that it would impose upon the industry and upon the North American Numbering Plan Administrator (“NANPA”) if it adopted its own measures. The “accelerating decrease” in the life expectancy of Wisconsin’s area codes cited in the petition is a condition faced by most states, and will not occur until at least several years in the future.³ Moreover, the Wisconsin PSC’s claim that steps such as

² See Wisconsin PSC Petition at 4-5.

³ See *id.* at 3.

number pooling need to be taken immediately so that they will be able to “have their most dramatic impact” should also be discounted. As Omnipoint recently stressed in separate comments, the preservation of future area codes does not justify the inefficiencies and costs that would be imposed if states were permitted to implement their own numbering policies prior to the implementation of national conservation guidelines.⁴

Omnipoint therefore believes it is clear that the Wisconsin PSC’s petition does not warrant separate or immediate consideration from the Commission’s closely-related rulemaking in CC Docket 99-200, and should be addressed as part of that proceeding. Likewise, Omnipoint encourages the Commission not to consider the number conservation issues raised in the Wisconsin PSC petition in isolation, but should examine them in light of the comments and considerable factual record established in CC Docket 99-200.

II. The Commission Must Ensure That Conservation Measures Continue to be Governed by Uniform, National Conservation Policies

The Commission must ensure that numbering issues continue to be governed by uniform, national policies, and must not let the system to devolve into a state-by-state patchwork of different conservation policies. For this reason, the Commission should not delegate states such as Wisconsin any additional authority to implement number conservation measures until it has finished establishing such standards and guidelines in its current rulemaking.

⁴ See Omnipoint Comments Regarding the Connecticut Department of Public Utility Control (“CTDPUC”) Petition for Delegation of Additional Authority to Implement Area Code Conservation Measures, File No. NSD-L-99-62/CC Dkt. 96-98, at 2-6 (filed Sept. 7, 1999)(“Omnipoint Connecticut Comments”).

Omnipoint opposes the Wisconsin PSC's requests that it be given additional authority to implement its own reporting, auditing, and conservation policies prior to the issuance of the Commission's national rules on these methods. As Omnipoint has previously commented⁵ – and as the Commission has itself concluded in the past⁶ – the establishment of uniform, national standards will prevent the decentralization of the national numbering system, preserve its unified administration by the NANPA and maintain the Commission's ability to design and implement long-term plans and policies for extending the life of the NANP.

As Omnipoint has also demonstrated in other related proceedings, uniform numbering policies are critical to the continued development of a competitive telecommunications market.⁷ New market entrants such as Omnipoint are currently struggling to gain sufficient number resources to serve their customers, and are wasting large amounts of time, money and human capital in doing so.⁸ Wireless providers such as Omnipoint have in some instances been forced to seek extraordinary numbering relief from state regulators simply to meet ordinary demand for new service, let alone periods

⁵ See Omnipoint Connecticut Comments at 4-5; see also Omnipoint State Comments at 1-5 and Omnipoint Numbering Comments at 2-5.

⁶ See Omnipoint Connecticut Comments at 3-4; see also Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215 and 717; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Memorandum Opinion and Order and Order on Reconsideration, 1998 FCC LEXIS 5036 (1998) at ¶ 21, citing In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, Declaratory Ruling and Order, 10 FCC Record 4596, 4602 (1995)(“Ameritech Order”).

⁷ See Omnipoint Connecticut Comments at 4-5 and Omnipoint Numbering Comments at 2-5.

⁸ Id.

of peak demand.⁹ In light of these conditions, the Commission must reform the current numbering system so that it does not obstruct competition, pursuant to its obligations under Section 253(d) of the Telecommunications Act of 1996 (“1996 Act”).¹⁰

To prevent these inefficient and anticompetitive conditions from worsening, the Commission must continue to prevent states such as Wisconsin from implementing short-term or experimental number conservation measures in the absence of uniform, national policies.¹¹ Permitting the states to formulate and implement their own solutions in the absence of a central plan would decentralize the current numbering system, creating a state-by-state checkerboard of policies.¹² Such a system would be extremely difficult for the NANPA to coordinate, and it would also complicate the Commission’s work in implementing its own number conservation policies in the future.¹³ Moreover, since wireless providers generally serve multi-state licensed areas, they will suffer serious

⁹ Id.

¹⁰ As such, the Commission must assure that any number conservation measures that are taken must: (1) facilitate competition in the telecommunications marketplace by making number resources available to carriers both quickly and efficiently; (2) not unduly favor or disfavor any particular industry segment or group of consumers; and (3) not unduly favor one telecommunications technology over another. See 47 C.F.R. § 52.9(a).

¹¹ See Omnipoint Connecticut Comments at 4-5 and Omnipoint State Comments at 1-5.

¹² Id.

¹³ Id.

compliance problems if the states are allowed to adopt uncoordinated and inconsistent numbering policies.¹⁴

It is therefore essential that the Commission must respond to the current shortages of numbering resources not by empowering state regulators such as the Wisconsin PSC to implement a non-uniform and uncoordinated system of state-by-state relief programs. Instead, as the Commission recognizes in its pending rulemaking in CC Dkt. 99-200, long-term solutions and uniform, national rules should be implemented before any additional number conservation measures are attempted at the state level.

III. The Commission Should Reconsider Employing Wireless-Only Overlays and Technology-Specific Overlays As Conservation Methods

As an alternative to the measures proposed by the Wisconsin PSC, Omnipoint reiterates its proposal that the Commission reconsider its rule barring the use of wireless-only or technology-specific overlays as conservation methods.¹⁵

¹⁴ As the Commission is aware, wireless providers generally operate in multi-state licensed areas based on either Major Trading Areas (“MTAs”) or Basic Trading Areas (“BTAs”). Cellular carriers serve either Metropolitan Statistical Areas (“MSAs”) which are also multi-state, or Rural Service Areas (“RSAs”) which are state-specific. The local Mobile Switching Centers (“MSCs”) and associated peripheral systems which wireless providers use to serve these regions invariably serve customers in multiple states. Programming the MSCs to behave one way in State A and yet another way in State B is cumbersome, technically problematic, and extremely expensive. Consequently, if individual states are allowed to pick and choose from a wide menu of conservation methods – and do so in the absence of standard, well-defined requirements -- such improvisation will substantially increase the cost of the vendor-developed software for the MSCs. Such results would drive up the costs of providing wireless services and hamper their development, and would harm both carriers and consumers without providing any corresponding benefit to the numbering system. See Omnipoint Numbering Comments at 4.

¹⁵ See Omnipoint Connecticut Comments at 6-8 and Omnipoint Numbering Comments at 19-22; see also Omnipoint State Comments at 6-12.

As Omnipoint has demonstrated in other pending proceedings, wireless-only overlays or technology-specific overlays are a particularly efficient means of resolving numbering shortages, since they are implemented on a state-wide basis or on the basis of MTA boundaries.¹⁶ Unlike other conservation methods, they also promise an immediate solution for wireless providers, which are at once a significant portion of the industry¹⁷ and which are comparatively blameless for the current number resource shortages.¹⁸ As a wireless carrier, Omnipoint has therefore concluded that wireless-only or technology-specific overlays are no more discriminatory, inherently anti-competitive, nor any more harmful to consumers than the current rate center methodology.¹⁹

For this reason, Omnipoint continues to support the use of wireless-only overlays in the absence of any finalized number conservation methodology guidelines, and requests that the Commission modify its decision in the Ameritech Order, which was codified in 47 C.F.R. § 52.19 (c)(3)(i). While the Ameritech Order sought to protect wireless providers at a time when the full record on efficient wireless industry number utilization was not known, it is now appropriate for the Commission to revisit this ruling.²⁰

¹⁶ Id.

¹⁷ See Omnipoint Connecticut Comments at 6-8. Wireline carriers are competing for the same customers – and a new customer for one carrier is a lost customer for another. Wireline carriers are growing at a rate of 3 to 5 percent each year. In contrast, wireless providers are attracting large number of new subscribers and are growing at a net rate of 20 to 30 percent each year. See Omnipoint Connecticut Comments at 6-8 and Omnipoint State Comments at FN 11.

¹⁸ See LNP Forbearance Order at ¶ 47.

¹⁹ Id.

²⁰ See Omnipoint Connecticut Comments at 7 and Omnipoint State Comments at 10.

Omnipoint continues to recommend that the Commission consider the following parameters for NPA-wide or state-wide overlays as means of addressing area code exhaust and number resource conservation: (a) mandatory assignment of NXXs from a new overlay code to wireless providers, paging carriers and carriers provisioning dedicated fax and data lines; (b) mandatory requirement that all new wireless handsets be assigned to the new overlay code; and (c) Commission forbearance from the mandatory ten-digit dialing requirement for all dialing within the existing or new NPAs as a result of the implementation of such a non-traditional overlay.²¹

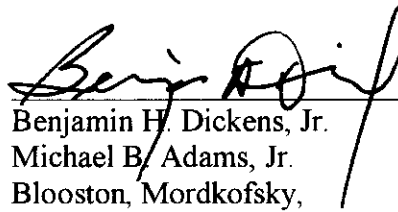
Omnipoint also renews its recommendation that wireless providers be asked to use commercially prudent methods to vacate their existing NXXs and return such NXXs to the NANPA for subsequent reassignment. Under no circumstances, however, should wireless providers be forced to make such NXX returns through measures such as number pooling.

²¹ See Omnipoint Connecticut Comments at 7 and Omnipoint Numbering Comments at 19.

IV. Conclusion

For the foregoing reasons, Omnipoint encourages the Commission to turn down the Wisconsin PSC's petition for additional numbering authority, especially in light of the pending rulemaking in CC Docket 99-200, and to continue to refrain from permitting state regulators any additional authority to implement number conservation methods until the Commission has issued uniform, national guidelines concerning such measures.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ben Dickens", is written over a horizontal line.

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September 13, 1999

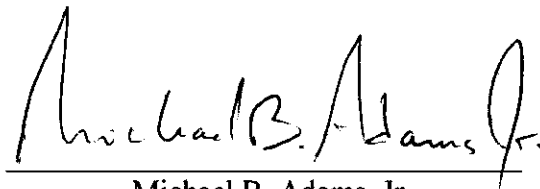
CERTIFICATE OF SERVICE

I, Michael B. Adams, Jr., hereby certify that I am an attorney with the law firm of Blooston, Mordkofsky, Jackson & Dickens and that a copy of the foregoing **"COMMENTS OF OMNIPOINT COMMUNICATIONS, INC."** was served this 13th day of September, 1999, by messenger to the persons listed below.

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A handwritten signature in black ink that reads "Michael B. Adams, Jr." The signature is written in a cursive, flowing style with a horizontal line underneath the name.

Michael B. Adams, Jr.